

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE TRUSTEES OF THE
UNITE HERE NATIONAL HEALTH FUND AND
THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND,
Plaintiffs,

against

METROSTATE HOSPITALITY CORP.
D/B/A HOLIDAY INN AND CONFERENCE CENTER,
Defendant.

COMPLAINT

Plaintiffs, The Trustees of the UNITE HERE National Health Fund and The Trustees of the UNITE HERE National Retirement Fund (hereinafter, the "Funds"), by their attorneys, as and for their Complaint, state as follows:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 (hereinafter, "ERISA"), as amended, P.L. 93-406, Title 29 U.S.C. 1001, et. seq.
2. The District Court has jurisdiction of this action under ERISA Section 1132(a)(3).
3. Venue of this action lies in this judicial district under ERISA Section 1452(d).
4. A copy of the pleadings in this action has been served upon the Secretary of Labor and the Secretary of the Treasury by certified mail pursuant to ERISA Section 1132(h).

THE PARTIES

5. Plaintiff, The Trustees of the UNITE HERE National Health Fund, sponsors a Multiemployer Employee Health and Welfare Benefits Plan (hereinafter, the "Health Fund") within the meaning of ERISA.
6. Plaintiff, The Trustees of the UNITE HERE National Retirement Fund, sponsors a Multiemployer Employee Pension Benefits Plan (hereinafter, the "Pension Fund") within the meaning of ERISA.
7. The Funds' sole administrative office is at 730 Broadway, New York, New York 10003.

COPY

8. Upon information and belief, Metrostate Hospitality Corp., D/B/A Holiday Inn and Conference Center (hereinafter, "Metrostate") has its principal place of business at 50 Kenny Place, Saddle Brook, New Jersey 07663.

FIRST CAUSE OF ACTION

9. Pursuant to a written Collective Bargaining Agreement entered into on February 1, 2001 between Metrostate and the Hotel Employees & Restaurant Employees International Union, Local 69, AFL-CIO (hereinafter, the "Union") Metrostate is obligated to make payments referred to as contributions to the UNITE HERE National Health Fund and the UNITE HERE National Retirement Fund for the purpose of providing health, welfare and pension benefits to the eligible employees of Metrostate.

10. ERISA Section 1145 provides that every employer who is obligated to make contributions to a Multiemployer Plan under the terms of a Collectively Bargained Agreement shall make such contributions in accordance with the terms of such Agreement.

11. The Trustees of the Funds by their administrators asked to audit Metrostate's books and records to verify that Metrostate had contributed in accordance with its contractual obligations for the period of January 1, 2004 through March 31, 2007.

12. The Trustees asked to examine the following books and records:

- a. Payroll Registers/Ledgers/Individual Earnings Records;
- b. IRS Forms 941;
- c. Personnel files and/or other documentation which supports employee job classifications; and
- d. State Unemployment Tax Returns.

13. Metrostate has refused to produce the requested records.

14. To date, Metrostate has not produced for inspection by the Funds' Auditors, at Metrostate's business premises during regular business hours, payroll records required to establish Metrostate's liability to the Funds' for the period of January 1, 2004 through March 31, 2007.

15. The Funds are entitled to perform an audit on the books and records of Metrostate.


WHEREFORE, plaintiffs demand:

1. That Metrostate be directed to produce for inspection payroll records required to establish Metrostate's liability to the Funds' for the period of January 1, 2004 through March 31, 2007.

2. That the Court awards to the Funds costs and expenses incurred in connection with this action, including reasonable attorney's fees.

3. That the Funds shall have such other and further relief as the Court shall deem just and proper.

Dated: April 30, 2007
New York, New York

A handwritten signature in black ink, appearing to read "Mark Schwartz", written over a horizontal line.

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